



No. 1

SUPREME COURT

Application for Leave and Notice of Appeal

For Office use

Supreme Court record number of this appeal	
Subject matter for indexing	

Leave is sought to appeal from	<input checked="" type="checkbox"/> The Court of Appeal	<input type="checkbox"/> The High Court
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[Title and record number as per the High Court proceedings]

CHRISTOPHER CONNORS	V	DISTRICT JUDGE JAMES FAUGHNAN AND THE DIRECTOR OF PUBLIC PROSECUTIONS
High Court Record No	2014 701 JR	Court of Appeal Record No 2016/124
Date of filing		
Name(s) of Applicant(s)/Appellant(s)	Christopher Connors	
Solicitors for Applicant(s)/Appellant(s)	Cahir O'Higgins & Co. Solicitors	
Name of Respondent(s)	District Judge James Faughnan And The Director Of Public Prosecutions	
Respondent's solicitors	The Chief Prosecution Solicitor	
Has any appeal (or application for leave to appeal) previously been lodged in the Supreme Court in respect of the proceedings?		
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
If yes, give [Supreme Court] record number(s)		

Are you applying for an extension of time to apply for leave to appeal?	Yes	<input checked="" type="checkbox"/>	No
If Yes, please explain why			

1. Decision that it is sought to appeal

Name(s) of Judge(s)	Mr. Justice Birmingham Mr. Justice Mahon
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	Mr. Justice Hedigan
Date of order/ Judgment	30 th June 2017. (Perfected on 6 th July 2017)

2. Applicant/Appellant Details

Where there are two or more applicants/appellants by or on whose behalf this notice is being filed please provide relevant details for each of the applicants/appellants

Appellant's full name	Christopher Connors
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Original status

<input type="checkbox"/>	Plaintiff
<input checked="" type="checkbox"/>	Applicant
<input type="checkbox"/>	Prosecutor
<input type="checkbox"/>	Petitioner

<input type="checkbox"/>	Defendant
<input type="checkbox"/>	Respondent
<input type="checkbox"/>	Notice Party

Solicitor	Stephen O' Mahony		
Name of firm	Cahir O'Higgins & Co. Solicitors		
Email	Somahony@coh.ie		
Address	Kingsbridge House, 17-22 Parkgate Street, Dublin 8	Telephone no.	01 8744744
		Document Exchange no.	
Postcode		Ref.	

How would you prefer us to communicate with you?

<input type="checkbox"/>	Document Exchange	<input checked="" type="checkbox"/>	E-mail
<input checked="" type="checkbox"/>	Post	<input type="checkbox"/>	Other (please specify)

Counsel			
Name	Conor Power SC		
Email	conor@conorpower.net		
Address	1 Arran Square, Arran Quay,	Telephone no.	01 4449896
		Document Exchange no.	816564
Postcode	Dublin 7		

Counsel			
Name	Oisin Clarke BL		
Email	oclarke@lawlibrary.ie		
Address	Law Library, Four Courts, Dublin 7	Telephone no.	087 9919370
		Document Exchange no.	301024
Postcode	Dublin 7		

If the Applicant / Appellant is not legally represented please complete the following

Current postal address	
e-mail address	
Telephone no.	

How would you prefer us to communicate with you?

<input type="checkbox"/>	Document Exchange	<input checked="" type="checkbox"/>	E-mail
<input type="checkbox"/>	Post	<input type="checkbox"/>	Other (please specify)

3. Respondent Details

Where there are two or more respondents affected by this application for leave to appeal, please provide relevant details, where known, for each of those respondents

Respondent's full name	District Judge James Faughnan And The Director Of Public Prosecutions
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Original status

<input type="checkbox"/>	Plaintiff
<input type="checkbox"/>	Applicant
<input type="checkbox"/>	Prosecutor
<input type="checkbox"/>	Petitioner

<input type="checkbox"/>	Defendant
<input checked="" type="checkbox"/>	Respondent
<input type="checkbox"/>	Notice Party
<input type="checkbox"/>	

Solicitor Tom Conlon			
Name of firm	Office of the DPP		
Email	tom.conlon@dppireland.ie		
Address	Infirmery Road, Dublin 7.	Telephone no.	01 8588500
		Document Exchange no.	38
		Ref.	
Postcode	Dublin 8		

How would you prefer us to communicate with you?

<input type="checkbox"/>	Document Exchange	<input type="checkbox"/>	E-mail
<input type="checkbox"/>	Post	<input type="checkbox"/>	Other (please specify)

Counsel Kieran Kelly

Name			
Email			
Address		Telephone no.	
		Document	

	Exchange no.
Postcode	

Counsel	
Name	
Email	
Address	Telephone no.
	Document Exchange no.
Postcode	

If the Respondent is not legally represented please complete the following

Current postal address	
e-mail address	
Telephone no.	

How would you prefer us to communicate with you?

<input type="checkbox"/>	Document Exchange	<input type="checkbox"/>	E-mail
<input type="checkbox"/>	Post	<input type="checkbox"/>	Other (please specify)

4. Information about the decision that it is sought to appeal

<p>Please set out below:</p> <p>1. Whether it is sought to appeal from (a) the entire decision or (b) a part or parts of the decision and if (b) the specific part or parts of the decision concerned</p> <p>It is sought to appeal from the entire decision.</p> <p>2. (a) A concise statement of the facts found by the trial court (in chronological sequence) relevant to the issue(s) identified in Section 5 below and on which you rely (include where relevant if certain facts are contested) (b) In the case where it is sought to appeal in criminal proceedings please provide a concise statement of the facts that are not in dispute</p> <p>a) The Applicant appeared before the first-named Respondent in Court number 18 in the Criminal Courts of Justice on the 23rd day of September 2014 on foot of an offence contrary to section 17 of the Criminal Justice (Theft and Fraud Offences) Act 2001 on foot of national charge sheet number 14360177. He was charged that he did, on the 16th of December 2012, handle stolen property, to wit a blue holdall bag worth €50, contrary to section 17 of the Criminal Justice (Theft and Fraud Offences) Act 2001.</p> <p>b) The Applicant's partner, Ms. Bridget Kelly, was also charged with this offence but was not present in Court on the 23rd day of September 2014 as she had</p>
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previously entered a guilty plea to the offence on the previous day, the 22nd September 2014.

- c) A concession was made at the commencement of the case that ownership of the item in question, the blue holdall, was not at issue and also that the item was found in the Applicant's bedroom, which he shared with Ms. Kelly.
- d) Detective Garda Ryan was the first prosecution witness and gave evidence for the State and, in summary, testified that he obtained a warrant to search your deponent's apartment at Apartment 3, Leonard's Court, Clanbrassil Street, Dublin 8 with a number of colleagues. He testified that during the course of the search, he was handed a blue holdall bag by Detective Sergeant Watters. This bag was the subject matter of the charge the subject matter of the proceedings. He testified that he believed the Applicant had stolen the bag in question.
- e) Detective Garda Ryan was cross-examined by Counsel for the Applicant and accepted that the Applicant's partner, Ms. Kelly, had entered a guilty plea to this offence and had accepted responsibility for the stolen item. He also testified that he believed she was one of two people who had possession of the bag but did not give any evidence as to who he believed the other person to be, nor did he give any evidence that he suspected there was any form of conspiracy, joint enterprise or common design between the Applicant and Ms. Kelly.
- f) Detective Sergeant Watters also gave evidence for the prosecution. His evidence mainly related to the locus of the stolen item and the size of the area it was found in. He also stated that the bag itself was closed when found.
- g) At the close of the Prosecution's case, Counsel for the Applicant made two submissions to the first-named Respondent seeking a direction on the basis that there were evidential deficits in the Prosecution's case which were fatal to the prosecution.
- h) The first submission made was to the effect that, in light of the evidence in particular of Detective Garda Ryan, such evidence as there was indicated the Applicant was involved in the theft of the item concerned, and he therefore could not be convicted of the offence of handling stolen property. Section 17 of the Criminal Justice (Theft and Fraud Offences) Act 2001 (hereinafter "the 2001 Act") provides that an offence is only committed pursuant to section 17 of the 2001 Act if the handling occurs "otherwise than in the course of the stealing". Counsel submitted that, seeing the prosecution had specifically alleged that the Applicant was involved in the theft of the item, he could not be convicted of the handling offence.
- i) The first-named Respondent did not engage with this submission at all and after some debate about whether Counsel should have cross-examined the Gardaí, (which was resolved in the Applicant's favour) simply stated that he was rejecting the submission without giving any reasons for this decision, despite

being asked for such reasons by Counsel.

- j) The second submission was that as another party (namely the Applicant's partner) had already entered a guilty plea to this offence, the State had to show evidence of common design or joint enterprise in order to convict another party of the same offence. Counsel indicated that there had been no evidence whatsoever led by the State in this regard and accordingly the State had failed in a vital evidential proof.
- k) The first-named Respondent rejected this second submission and simply stated that the Applicant had a case to answer. He did not engage with the submissions made whatsoever and did not indicate why he was rejecting the application.
- l) As a result Counsel asked the first-named Respondent if he would provide reasons for rejecting the submission made and the first-named Respondent informed Counsel that he did not have to give him reasons.
- m) The first-named Respondent then told Counsel that he (referring to Counsel) knew that he did not have to give reasons for rejecting the submission and that there were many High Court cases, one as early as the previous week, which confirmed this position. The case the first-named Respondent was referring to that had been then published the week before, which the first-named Respondent did not name, was a decision by Kearns P. in *O'Brien v District Judge John Coughlan* which, while dealing very briefly with the general duty to give reasons in criminal trials, was not primarily concerned with that issue.
- n) Counsel asserted that while he did accept that in a simple case there was no duty on a District Judge to give reasons, in the circumstances of this case, a technical legal submission had been made which the State solicitor was unable to answer and your deponent would now have to go into evidence in the invidious position of not knowing why the arguments made by Counsel had been rejected.
- o) On foot of this submission, the first-named Respondent simply read out the last two lines of the charge sheet in front of him and said nothing further. When Counsel attempted to argue the insufficiency of this approach, he was cut off and told his submission was rejected.
- p) Leave was granted to seek various reliefs by means of Judicial Review on the 24th November 2014.
- q) The matter was heard by O' Regan J on the 15th February 2016 and the reliefs sought were refused on the basis that the submissions made on behalf of the Applicant were adequately dealt with by the District Judge's recitation of part of the charge sheet.

3. The relevant orders and findings made in the Court of Appeal

The Court of Appeal held that, on foot of the Supreme Court case in *Kenny v Coughlan* [2014] IESC 15, where the nature of the case is so straightforward or obvious or the submissions are so weak or unstateable that the need for a District Court judge to give reasons is met by simply stating that the application for a direction is refused.

5. Reasons why the Supreme Court should grant leave to appeal

In the case of an application for leave to appeal to which Article 34.5.3° of the Constitution applies (i.e. where it is sought to appeal from the Court of Appeal)—

Please list (as 1, 2, 3, etc) concisely the reasons in law why the decision sought to be appealed involves a matter of general public importance and/or why in the interests of justice it is necessary that there be an appeal to the Supreme Court

1. This appeal raises important questions as to the extent of the requirement to give reasons in summary proceedings, specifically in circumstances where the District Judge wrongly stated that he was not obliged to provide reasons.
2. This appeal raises issues of public importance as to the necessity to give coherent reasons that address the arguments and submissions made in circumstances where there was a specific request for reasons made
3. It is in the interests of justice to grant leave to appeal as it is in breach of a Defendant's constitutional rights to be told he is not entitled to any/or any valid reasons for a decision.
4. It is a matter of general public importance to clarify whether reciting parts of a charge sheet can be regarded as giving sufficient or adequate reasons for a decision in circumstances where the District Judge has already erroneously indicated he does not have to do so.
5. It is in the interests of justice to grant leave to appeal when recent Supreme

Court authority on the principle issue, namely *Oates v Judge Browne and DPP* [2016] IESC 7, having been opened extensively by the Appellant, was not referred to in the Court of Appeal decision.

6. The issues raised herein before the District Court did not relate to purely factual issues, but involved a decision upon a submission of mixed law and fact concerning the statutory ingredients of an offence and the manner in which same can be committed. In such circumstances the Applicant was entitled to some reasons for the refusal of the trial judge to accede to the request for the direction.
7. The applicable general principles as set out by the Court of Appeal do not afford sufficient weight to the accused's right to reasons for the rejection of a submission on a mixed issue of law and fact. The principles seem forgiving of the total absence of reasons in cases, such as the within case, where the issues raised transcended purely factual issues.
8. The Court of Appeal focused upon the substantive strength of the submissions made, and held that reasons were not necessary as they were "very weak." That was to beg the question and step into the shoes of the District Judge, who gave no such reason. The parameters of the various roles are a matter of public interest.

6. Ground(s) of appeal which will be relied on if leave to appeal is granted

Please list (as 1, 2, 3, etc) concisely:

1. the specific ground(s) of appeal and the error(s) of law related to each numbered ground
2. the legal principles related to each numbered ground and confirmation as to how that/those legal principle(s) apply to the facts or to the relevant inference(s) drawn therefrom
3. The specific provisions of the Constitution, Act(s) of the Oireachtas, Statutory Instrument(s) and any other legal instruments on which you rely
4. The issue(s) of law before the Court appealed from to the extent that they are relevant to the issue(s) on appeal

1. The specific ground(s) of appeal and the error(s) of law related to each numbered ground

1. The Court of Appeal erred in holding that the District Judge's decision to dismiss the submissions without giving reasons was permissible in

the circumstances of the case.

2. The Court of Appeal erred in holding that, notwithstanding indicating that it was permissible for the District Judge not to give reasons, that the learned judge had in fact engaged with the arguments made and gave reasons.
3. The Court of Appeal erred by holding that the District Judge had engaged in the arguments made by Defence Counsel.
4. The Court of Appeal erred in holding that the recitation by the District Judge of two lines of section 17 of the 2001 Act was an appropriate discharge of his requirement to give reasons.
5. The Court of Appeal erred in holding (at para 19) that the District Judge recited section 17 of the 2001 Act. This error was also made by the High Court and was specifically appealed. The trial judge referred to the Charge Sheet.
6. The Court of Appeal erred in holding that the case of *Kenny v Coughlan* [2014] IESC 15 was “a very good comparator” for this case. That said case concerned a speeding charge and is readily distinguishable on the facts from the charge at issue herein.
7. The Court of Appeal erred in holding that the submissions made were of such weak character that the District Judge did not have to give reasons.
8. The Court of Appeal erred in holding that the District Judge’s contention that Defence Counsel should have cross-examined the Garda further in respect of an issue in the case was an engagement with the arguments raised by Counsel.
9. The Court of Appeal erred in holding that, while the exchange between the District Judge and Defence Counsel was “inconclusive”, it was removed from failing to engage at all. In the circumstances, if the reasons given were inconclusive, they do not comply with the case law relating to giving reasons.
10. The Court of Appeal erred in holding that the District Judge’s statement that he did not have to give reasons did not bring him into unconstitutionality.
11. The Court of Appeal erred in failing to consider the recent Supreme Court authority on this issue in *Oates v Judge Browne* [2016] IESC 7, nor the recent High Court authority in *Ayadi V D.P.P.* (Unreported, High Court, 20th January 2017) which was relevant and indicated that a charge under section 17 of the 2001 Act was not a “simple offence”.
12. The Court of Appeal erred insofar as in applying dicta from *Lyndon v Judge Collins* [2007] IEHC 487 it considered that it is sufficient that reasons can be “clearly implied” and that an appeal can meet any defect. The latter begs the question the absence of reasons and the former cannot be seen as good law.

2. The legal principles related to each numbered ground and confirmation as to how that/those legal principle(s) apply to the facts or to the relevant inference(s) drawn therefrom

1. The legal principles extracted from the case law on the requirement to give reasons do not, on any view, allow the finder of fact to dispense with the obligation to give reasons simpliciter. In the within case, the District Judge specifically stated he was not obliged to give reasons and erroneously stated that Superior Court case law gave him that authority.

2. The finding that the District Judge engaged with the submissions made and gave reasons for his rejection of the submissions has to be seen in light of his earlier comments that he did not have to do so. In all the circumstances, reasons cannot now be established by some form of inference the reasons, if any, which actually operated on the learned Respondent's mind at the time. In any case, the putative reason as provided did not match both submissions made.

3. Two very recent authorities on the issue the subject matter of the proceedings before the Court of Appeal, were opened extensively by the Applicant namely, *Oates v Browne* and *Ayadi v D.P.P.* *Oates* is a strong authority for the requirement to give reasons. In *Ayadi*, the Defendant was facing similar charges to the Appellant herein, an offence of handling stolen property and Ní Raifeartaigh J distinguished this offence from a simple offence like speeding as had been dealt with in *Kenny v Coughlan*. Neither judgment was referred to by the Court of Appeal in their decision.

4. The judgment of the Court of Appeal states, alternatively, that (i) the District Judge was correct in that he did not have to give reasons on the basis of the submissions made (ii) that he did, in fact, engage with the submissions and (iii) that this engagement was inconclusive. It is submitted that those statements are mutually exclusive and do not lend to certainty on the law on this topic.

3. The specific provisions of the Constitution, Act(s) of the Oireachtas, Statutory Instrument(s) and any other legal instruments on which you rely.

a) Article 38 of the Constitution;

4. The issue(s) of law before the Court appealed from to the extent that they are relevant to the issue(s) on appeal

1. The nature of the obligation requirement to give reasons in summary matters on an application for a direction, consisting of a mixed issue of law and fact, where the District Judge made a specific statement that no such obligation exists.

Name of solicitor or (if counsel retained) counsel or applicant/appellant in person:

Conor Power SC & Oisin Clarke BL

7. Other relevant information

Neutral citation of the judgment appealed against

Court of Appeal [2017] IECA 196

References to Law Report in which any relevant judgment is reported

8. Order(s) sought

Set out the precise form of order(s) that will be sought from the Supreme Court if leave is granted and the appeal is successful:

(a) An Order allowing the appeal of the Applicant/Appellant and granting an Order of Certiorari quashing the conviction and sentence of the Applicant on foot of national charge sheet number 14360177, the said conviction having been made at Court number 18 in the Criminal Courts of Justice on the 23rd day of September 2014, by the District Judge and the said sentence having been imposed by the said District Judge on the 7th October 2014.

(b) Costs.

What order are you seeking if successful?

Order being set aside vary/substitute
appealed:

Original order: set aside restore vary/substitute

If a declaration of unconstitutionality is being sought please identify the specific provision(s) of the Act of the Oireachtas which it is claimed is/are repugnant to the Constitution

n/a

If a declaration of incompatibility with the European Convention on Human Rights is being sought please identify the specific statutory provision(s) or rule(s) of law which it is claimed is/are incompatible with the Convention

n/a

Are you asking the Supreme Court to:

depart from (or distinguish) one of its own decisions?

Yes

No

If Yes, please give details below:

The Court of Appeal held *Kenny v Coughlan* to be "a very good comparator." It is submitted that the case is factually distinguishable from the within case as it concurred a speeding offence, where the Supreme Court held (para 15) that: "the nature and ingredients of the offence are straightforward." That is not the case herein.

make a reference to the Court of Justice of the European Union?

Yes

No

Will you request a priority hearing?

Yes

No

If Yes, please give reasons below:

This is a matter for this Honourable Court

Signed: _____

(Solicitor for) the applicant/appellant

Please submit your completed form to:

The Office of the Registrar of the Supreme Court

The Four Courts

Inns Quay

Dublin

together with a certified copy of the Order and the Judgment in respect of which it is sought to appeal.

This notice is to be served within seven days after it has been lodged on all parties directly affected by the application for leave to appeal or appeal.